

Ethics for Lobbyists

For Individuals Registered to Lobby in the State of New York



Commission on Ethics and Lobbying in Government

July 8, 2022

Welcome

Why am I required to take this training?

Legislative Law Article 1-A ("Lobbying Act") and Part 943.5 of the Comprehensive Lobbying Regulations ("Regulations") require that individuals listed on a Registration Statement complete an ethics training course at least once in every three-year period.

Disclaimer

The information presented in this course provides general information about New York's ethics and lobbying laws and compliance requirements. The information in this course is not designed to be a substitute for legal advice and should not be viewed as constituting legal advice.

If you seek legal guidance on a situation related to lobbying or ethics, you are urged to contact the Commission's Ethics and Lobbying Compliance Unit at (518) 408-3976 to obtain specific advice about your circumstances.

Disclaimer

About This Course



Chapter One:
**Honesty &
Accuracy in
Financial
Reporting**



Chapter Two:
**Ethical Restrictions
on Lobbyists**



Chapter Three:
**Don't Put Public
Officials at Risk**



Chapter Four:
**Ethical
Considerations and
the Election Law**

The background of the slide features a dark blue overlay on a lighter blue image. The image shows a close-up of a calculator's keypad with buttons for numbers 0-9, a decimal point, an equals sign, and an 'AC' button. To the right of the calculator, there is a list of financial numbers, some positive and some negative, such as 456.77, -665.20, -140.00, -2611.05, 158.50, 2214.00, -80.00, -133.40, -665.40, 10360.92, and 10067.82. The text 'Honesty & Accuracy in Financial Reporting' is centered in a light blue font.

Honesty & Accuracy in Financial Reporting

Chapter One

“... the operation of responsible democratic government requires that the fullest opportunity be afforded to the people to petition their government for the redress of grievances and to express freely to appropriate officials their opinions on legislation and governmental operations;
... to preserve and maintain the integrity of the governmental decision-making process in this state, it is necessary that the identity, expenditures and activities [of lobbyists] be publicly and regularly disclosed.”



- The New York State Lobbying Act

Transparency

Honest and accurate reporting provides the public with the tools to promote integrity and accountability in the governmental process.

What is reported?

Public confidence is increased by the effective disclosure of lobbying data, including:

- who is lobbying on a specific matter
- which governmental entity and/or public official is being lobbied
- who or what entity is paying the lobbyist
- how much money is being spent on the effort

In order to serve this important public interest, the Lobbying Act requires that lobbyists and clients honestly and accurately report lobbying data.

Registration Statements

Login



The image shows a login form for NY.gov ID. It includes a header with the NY.gov ID logo, a Username field with the text 'NYlobbyist', a Password field with masked characters, a checkbox for 'I'm not a robot' with a checkmark, and a reCAPTCHA logo with links for 'Privacy' and 'Terms'. A 'Sign In' button is visible at the bottom.

The lobbyist Registration Statement is the first step in providing transparency in the lobbying process.

When must a lobbyist file a Registration Statement?

The threshold for filing is \$5,000 in Reportable Compensation and Expenses.

A Registration Statement must be filed when a lobbyist or lobbying entity incurs, spends, or receives more than \$5,000 in reportable compensation and expenses in any calendar year, or when the lobbyist anticipates meeting this threshold.

What is disclosed?

- The specific individuals who are authorized to lobby
- Client on whose behalf the lobbying activity is performed
- Type of lobbying, i.e., procurement, non-procurement, or both
- Level of government and entity being lobbied (i.e., State, municipality, and name of agency or legislative body)
- General subject matter to be lobbied
- Terms of the lobbying relationship, including compensation
- Reportable Business Relationships the lobbyist may have with State officers and employees

Reportable Business Relationships

The democratic process is made more transparent when the public has access to information about the nature of any business relationships between lobbyists and governmental decision-makers.

What is a Reportable Business Relationship?

A “Reportable Business Relationship” (RBR) is a relationship in which the lobbyist pays at least \$1,000 in annual compensation to a State Person (or to an entity in which a State Person is significantly involved) in exchange for goods or services to be provided or performed by the State Person or by the affiliated entity.

How often are RBRs reported?

If you, or a lobbyist in your firm, have a RBR with a State Person, or with an entity related to the State Person, the existence of this relationship must be reported on every Registration Statement regardless of who the client may be.

What is disclosed?

- Name and public office address of the State Person, or affiliated entity
- Description of the relationship or agreement between the lobbyist and the State Person or affiliated entity
- Amount of compensation to be paid pursuant to the relationship or agreement

Bimonthly & Client Semi-Annual Reports

The Lobbying Act requires lobbyists and clients to file separate reports that provide comparable information.

Lobbyist Bimonthly Reports

In addition to filing a Registration Statement, lobbyists are required to file Bimonthly Reports that include more precise information about the lobbying activity that occurred during the applicable reporting period.

Clients of Lobbyists Semi-Annual Reports

Clients of lobbyists are required to file Semi—Annual Reports. The Client Semi—Annual Report identifies the lobbyist and subject matter to be lobbied, Reportable Compensation and Expenses, and, for certain clients, the names of “sources of funding.”

Reportable Expenses

If expenses associated with the following activities are in support of the overall lobbying effort, they should be reported:

- advertising
- electronic advocacy
- food and/or beverages
- tickets
- entertainment
- parties, receptions, or similar events

Source of Funding Reporting

The Client Semi-Annual Report requires the disclosure of Sources of Funding for lobbying activity.

Disclosure allows the public to better understand who or what entity, and the special interests they may represent, is actually paying for substantial lobbying initiatives in New York State.

What is Source of Funding reporting?

Lobbyists who lobby on their own behalf and Beneficial Clients of lobbyists (as defined in Part 943.3 (d) of the Regulations) who meet the statutory Expenditure Threshold are required to **disclose each source of funding over \$2,500** in lobbying in their Client Semi-Annual Report (CSA).

Source of funding reporting does not apply to retained lobbyists.

What is the Expenditure Threshold?

During the requisite period, the lobbying entity spends in excess of \$15,000 in Reportable Compensation and Expenses for lobbying;

and

the entity's expenditures for lobbying in New York State constitute at least 3% of its overall Total Expenditures.

See: [19 NYCRR Part 938](#)

Good Record-Keeping

Keeping accurate records is an important part of financial disclosure.

All lobbying reports are subject to random audit by the Ethics Commission.

Records Retention

The Lobbying Act requires retention of lobbying reports and all related records for three years for annual reports, and three biennial periods for biennial reports.

The retention of these records serves a vital public interest because they provide a means to verify the honesty and accuracy of the data filed in the reports.

Failure to retain records related to Registration Statements, Bimonthly Reports and Client Semi-Annual Reports for three years can result in a civil penalty of up to \$2,000.

Violations & Penalties

Violations of the Lobbying Act can result in civil and/or criminal penalties.

Civil & Criminal Penalties

Failure to File or File Timely:

Up to \$25,000 or 3 times the amount the Lobbyist or Client failed to report

False Filing:

Up to \$50,000 or 5 times the amount the Lobbyist or Client failed to report

Multiple Violations:

Multiple violations of the Lobbying Act within a five-year period may result in a class E felony, and/or debarment from lobbying.

Best Practices

The following are suggested best practices for reporting and recordkeeping.

Registration Statements

- File timely and accurately to avoid late fees or civil penalties.
- Amend the Registration Statement if any of the required information changes.
- As a lobbyist or lobbying entity, exercise reasonable due diligence in determining whether you, or any of the lobbyists listed on the Registration Statement, have any Reportable Business Relationships with State Persons.
- Always include a copy of the retainer agreement including compensation terms.

Bi-Monthly & Semi-Annual Reports

- File timely and accurately to avoid late fees or civil penalty.
- Be specific and transparent. For example, identify the name of the lobbyist(s) who actually lobbied during this period, the title of the bill, regulation, rate-making or procurement contract that was lobbied for, and the party lobbied.
- File reports using your entity's internal accounting method, i.e., cash basis or accrual basis throughout the biennial period.

Retention of Records

- Retain primary documentation that substantiates all reported amounts including compensation, expenses, and sources of funding.
- File your lobbying reports using your entity's internal accounting method, i.e., cash basis or accrual basis.
- Encourage clients to contact the Ethics Commission for assistance with filing their reports.

A person in a dark suit and white shirt is holding a tablet computer. The background is a blurred city skyline with tall buildings. The entire image has a blue tint.

Ethical Restrictions on Lobbyists

Chapter Two

Ethical Restrictions on Lobbyists

The Lobbying Act contains restrictions designed to promote a fair and open culture in the business of influencing public policy and government decision-making by Public Officials.

Three Primary Restrictions

The Lobbying Act places restrictions on three main things:

- Lobbyist compensation - "contingent retainer" prohibition
- Gifts to Public Officials
- Procurement Lobbying

Contingent Retainer Prohibition

Contingent retainers undermine public confidence in government by creating the appearance that a lobbyist may exert improper influence on a public official in order to accomplish a desired end.

The contingent retainer prohibition exists for both sides of the transaction. Thus, the Lobbying Act also prohibits a client from retaining or employing a lobbyist and having a contingent retainer as part of that agreement.

Prohibited Forms of Compensation

- The Lobbying Act prohibits success fees or contingent retainers in any form.
- No lobbyist shall accept employment for lobbying where compensation for such advocacy, in whole or in part, is dependent upon the outcome of any governmental decision.
- Contingent retainers are prohibited whether or not the agreement is in writing.

Penalties

A violation of the contingent retainer prohibition subjects an individual to a civil penalty of up to \$10,000 and is punishable as a Class A misdemeanor.

Restrictions on Giving Gifts

Although a common practice in the private sector, public officials are generally prohibited from receiving gifts.

Giving gifts to Public Officials can result in civil penalties and even criminal referrals.

Private Sector vs. Public Service

In the private sector, business deals can be discussed over dinner at a restaurant or at a sporting event or concert. At holidays or birthdays, a business owner may send a bottle of wine or a fruit basket to a valued customer.

In New York State, Public Officials - and even their spouse or unemancipated child - are generally prohibited from engaging in these types of activities with lobbyists.

The Lobbying Act's ethical safeguards restrict when and how a lobbyist may offer a gift to a Public Official and certain family members.

These restrictions exist to prevent the appearance that the gift could be intended to affect the outcome of a Public Official's decision or be a reward for an official action.

Who is a Public Official?

- the four statewide elected officials and their employees
- members, officers and employees of the State Legislature
- officers, members and employees of State agencies, public authorities, public benefit corporations and commissions at least one of whose members is appointed by the governor
- municipal officers and employees including an officer or employee of a municipality, whether paid or unpaid, including members of any administrative board, commission or other agency thereof and in the case of a county, shall be deemed to also include any officer or employee paid from county funds.

What is a Gift?

Any item or service of more than “Nominal Value”.

“Nominal Value” means, generally, \$15 or less.

This includes:

money, services, loans, travel, lodging, meals, beverages, entertainment, discounts, forbearances or promises having a monetary value.

The Gift Restriction

No lobbyist listed on a Registration Statement (or client of that lobbyist) shall offer or give a gift to any Public Official, or the Public Official's spouse or unemancipated child, unless, under the circumstances, it is not reasonable to infer that the gift was intended or expected to influence such public official or reward the Public Official for any official action.

If you are lobbying a Public Official, it is hard to overcome the appearance that a gift is not intended to influence the Public Official.

Scope

Regulations also prohibit a lobbyist or client from offering or giving a gift to a third party, including a charitable organization, on behalf of, or, at the designation or recommendation of a public official (or their spouse or unemancipated child), when such gift cannot be offered or given to such Public Official (or the spouse or unemancipated child).

In other words, if a public official is barred from accepting a gift, they are also barred from redirecting that gift to a third party, even a charity.

Impact on Coalitions

Did you know?

Coalitions are also subject to the gift restrictions.

With respect to coalitions, the beneficial client includes individual members of a coalition who exceed \$5,000 in lobbying compensation and expenses, and, therefore, such members are subject to the gift restrictions.

Exceptions to the Gift Restrictions

- A travel payment offered to a public official to attend an informational event or meeting when such payment is made by a governmental entity or institution of higher education in New York State
- Provision of local transportation within New York State for tours of facilities or property directly related to the public official's duties and responsibilities
- Gifts to a public official from a family member, member of the same household, or person with a demonstrated personal relationship with the public official
- Discounts available to the general public, or a wide segment thereof
- Promotional items of no resale value
- Food or beverage valued at \$15 or less per event
- Meals and beverages when provided to all participants at a professional or educational program
- Complimentary attendance offered by the sponsor of a "Widely Attended Event"
- Complimentary attendance at a bona fide charitable or political event
- Public presentation of an award or plaque in recognition of public service provided that the item is of the type customarily given at such ceremonies
- Honorary degree offered by a public or private college or university
- Contributions reportable under Article 14 of the Election Law

Violations & Penalties

A gift violation can result in a civil penalty of up to \$25,000 or 3 times the amount the lobbyist or client unlawfully gave or contributed.

Multiple violations of the Lobbying Act within a five-year period may result in a class E felony, and/or debarment from lobbying.

The Ethics Commission has issued regulations providing guidance on these gift restrictions.

Please see [19 NYCRR Part 934](#) for more information.

Procurement Lobbying

The Lobbying Act's regulation of procurement lobbying ensures that entities compete for public contracts on an equal playing field.

What is Procurement Lobbying?

It is any attempt to influence any determination by a Public Official, or a person or entity working with a Public Official, related to a governmental procurement for goods, services, revenue contracts, or real property involving an estimated annualized expenditure in excess of \$15,000.

Registration Requirements

Any lobbyist or lobbying entity that incurs, expends or receives in excess of \$5,000 in any year during a biennial period for attempting to influence a governmental procurement is required to file with the Ethics Commission a Registration Statement and Bimonthly Reports.

Restrictions

The procurement lobbying restrictions limit the communication that a lobbyist or client can have with the "designated contact" of the governmental entity during the "restricted period."

The restricted period begins at the government entity's earliest attempt to solicit a response with regard to a written procurement contract and ends with the final contract award.

Civil Penalties

There are civil penalties for failing to follow the procurement lobbying restrictions.

- The initial violation of the procurement lobbying restrictions subjects a lobbyist (or client) to a civil penalty up to \$10,000.
- If the second violation occurs within four years of the first violation, the civil penalty is up to \$25,000.



Don't Put Public Officials at Risk

Chapter Three

Don't Put Public Officials at Risk

A lobbyist should be aware of how his or her actions may expose a Public Official to the risk of violating ethics laws.

A lobbyist should not participate in any activity that may result in an ethics law violation by a Public Official.

Legal Boundaries

Different ethics laws apply to a public official based upon his or her status as a State or municipal officer or employee.

In addition to lobbyists, the Ethics Commission enforces the ethics laws that apply to New York State officers and employees.

This chapter will highlight various ethics provisions from Public Officers Law § 74, § 73-a, and § 73.

The Code of Ethics

Public Officials are bound by a code of ethics that centers on nine standards of ethical conduct.

Jurisdiction

The Code of Ethics applies to all State officers and employees, including per diem and unpaid officers and members of State agencies, and employees of "closely affiliated corporations."

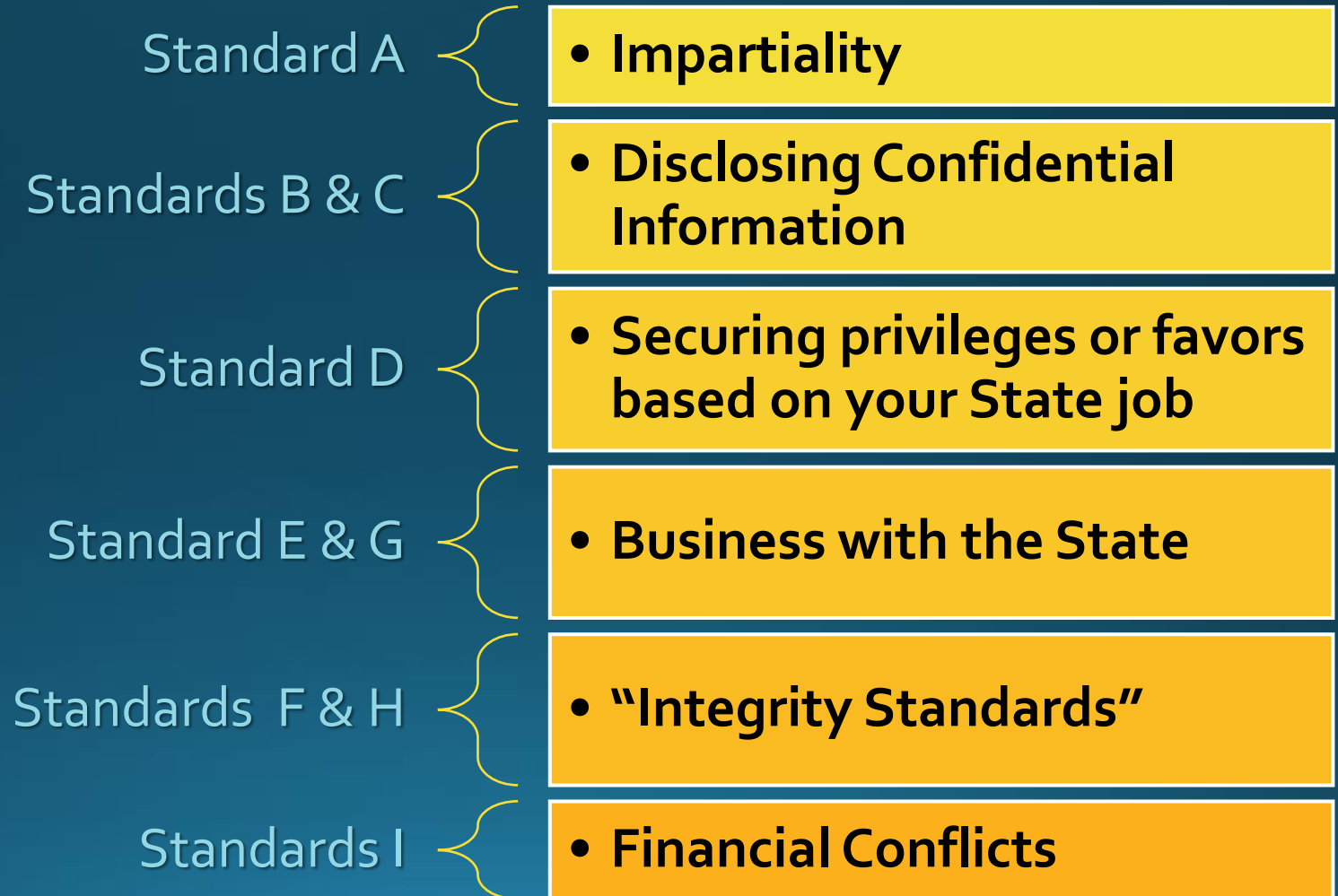
Guiding Principles

The Code of Ethics embodies the guiding principles of impartiality, confidentiality, integrity, and stewardship of State resources.

See: [Public Officers Law § 74](#)

Nine Standards of Conduct

These standards of conduct prohibit the use of a State officer's or employee's official position or authority for his or her personal benefit or the benefit of another.



Chapter Three - Section Two: The Code of Ethics

A:

State officers or employees should not accept outside employment that impairs their impartiality in performing their State duties and responsibilities.

B:

State officers or employees should not accept outside employment or engage in any business or professional activity that requires them to disclose confidential information that they have gained as a result of their State position.

Chapter Three - Section Two: The Code of Ethics

C:

State officers or employees should not disclose confidential information received as a result of their State position.

In addition, State officers or employees should not use such confidential information to further their own personal interests or the interests of another.

D:

State officers or employees should not use or attempt to use their State position to secure unwarranted privileges or exemptions for themselves or others.

This includes, but is not limited to, the misappropriation of the property, services or other resources of the State for private business or other compensated non-governmental purposes.

Chapter Three - Section Two: The Code of Ethics

E:

State officers or employees should not engage in any transaction as representative or agent of the State with any business entity in which they have a direct or indirect financial interest that might reasonably tend to conflict with the proper discharge of their State duties.

F:

State officers or employees should not conduct themselves in such a way that gives the reasonable impression that a person or entity can improperly influence them, or enjoy their favor, in the performance of their State duties.

Chapter Three - Section Two: The Code of Ethics

G:

State officers or employees should not make personal investments in enterprises that are directly related to their State duties, or that would create a substantial conflict between their State duties and their private interests.

H:

State officers or employees should conduct themselves in a manner that does not raise suspicion that they are engaged in personal or official acts that are in violation of the public trust.

I:

Full-time State officers or employees are prohibited from contracting for the provision of goods and services with entities regulated or licensed by their agency.

This prohibition also applies to any entity in which a State officer or employee is a member, and to any corporation in which a substantial portion of the stock is owned or controlled directly or indirectly by the State officer or employee.

Financial Disclosure Statements

Public Officials are held accountable to the public by filing financial disclosure statements that help to prevent conflicts of interest.

Annual Financial Disclosure Statement

Public Officers Law § 73-a:

Certain State officers and employees are required to file an annual financial disclosure statement (FDS). The FDS is a publicly available record containing information about the professional associations and financial holdings of FDS filers.

The purpose of the FDS is to provide transparency to the public in order to prevent conflicts of interest and abuses of official position.

Increased Disclosure Requirements

Recent statutory changes have increased the required level of disclosure by FDS filers with respect to those State officers or employees in certain professions who provide services to clients or firms, e.g., lawyers, engineers, real estate brokers.

FDS Question #8

Specifically, in FDS Question #8(b-1), (b-2), and (c), an FDS filer is required to disclose information on the:

- identity, compensation, and subject matter regarding clients for whom services were provided related to influencing certain governmental actions
- identity and compensation for certain other clients who received any services
- identity, compensation, and subject matter for certain clients who were referred to the filer by a registered lobbyist

Exceptions & Exemptions

In all client disclosure questions, specific exceptions exist for services related to investigation or prosecution related matters, bankruptcy, family court, and others.

Additionally, a filer may request an exemption from the Ethics Commission from reporting other clients, based on limited criteria.

Internal Controls

All lobbying entities who also employ these State officers or employees should ensure that a system of tracking and controls is in place to allow covered individuals to accurately complete the FDS with respect to client disclosure requirements.

Gifts to State Officers & Employees

Public Officers Law generally prohibits State officers from accepting gifts from those who seek to do business with them.

No

Overview

By giving a gift to a State officer or employee you may (in addition to violating the Lobbying Act) put the State officer or employee at risk of violating the Public Officers Law.

Public Officers Law § 73(5)(b)

State officers or employees shall not solicit, accept or receive a gift from a lobbyist or client unless under the circumstances it is not reasonable to infer that the gift was intended or expected to influence the State officer or employee, or was a reward for an official action.

Public Officers Law § 74

Further, the Public Officers Law and Commission regulations prohibit a State officer or employee from accepting multiple permissible gifts from the same source.

Depending on the circumstances, the State employee's acceptance of the gifts may violate Public Officers Law § 74 by creating an actual or apparent conflict of interest or an appearance of improper influence.

Gifts to Third Parties

The Public Officers Law and Ethics Commission regulations also prohibit a State officer or employee from redirecting an impermissible gift to a third party, including a spouse, child, or a charitable organization.

Gift Scenario

A lobbyist, Mr. Jones, offers a public official, Ms. Doe, four front row tickets to a Broadway show. Mr. Jones lobbies Ms. Doe's agency.

Ms. Doe says, "Thank you so much for that offer but I cannot accept this gift as a State employee. Why don't you give those tickets to the Red Cross? I volunteer for them frequently and that would be an amazing event to raffle off at their next gala." Mr. Jones then sends the gift to the Red Cross at Ms. Doe's request.

Is this permissible? Yes or No?

Scenario Analysis

This would not be permissible.

In this scenario, Ms. Doe - a State employee - has violated the gift rules by redirecting an otherwise impermissible gift to a charitable organization.

In addition, Mr. Jones has violated the commission's gift regulations for lobbyists. 19 NYCRR Part 934 prohibits a lobbyist or client from offering or giving a gift to a third party, including a charitable organization:

1. on behalf of a public official (or their spouse or unemancipated child), when such gift cannot be offered or given to such public official (or the spouse or unemancipated child) or
2. at the designation or recommendation of a public official (or their spouse or unemancipated child), when such gift cannot be offered or given to such public official (or their spouse or unemancipated child).

Post-Employment Restrictions

When recruiting former State officers and employees (including former legislative members and employees) to work as lobbyists, you should be aware of the post-employment restrictions that apply depending on the person's former position in State government.

Two-Year Bar: Former State Agency Employees

Former employees are prohibited from appearing or practicing before their former agency for two years. This prohibition applies to paid and unpaid appearance or practice.

Former employees are also prohibited from being paid to perform “backroom” services on matters before their former agency even if those services do not involve physically appearing or practicing before the former agency.

Two-Year Bar: Legislative Members & Employees

Former legislative members are prohibited from receiving compensation for any services on behalf of any person, firm, corporation, or association to promote or oppose, directly or indirectly, the passage of bills or resolutions by either house of the legislature.

Former legislative employees are prohibited from receiving compensation for any services on behalf of any person, firm, corporation, or association to appear, practice, or directly communicate before either house of the legislature to promote or oppose the passage of bills or resolutions by either house of the legislature.

Two-Year Bar: Former Executive Chamber Employees

If you are recruiting from the Executive Chamber, you should know that the two-year bar is more restrictive than it is for other State agency employees.

Former Executive Chamber employees are prohibited from appearing or practicing regardless of compensation before any State agency for two years.

These employees may perform “backroom” services for compensation before agencies other than the Executive Chamber.

Lifetime Bar

When recruiting former State officers or employees, including from the Executive Chamber, the lifetime bar may prohibit their further involvement on the same case, application, proceeding, or transaction in which they were directly involved and personally participated while in State service.

The lifetime bar does not apply to legislative members or employees.



CAMPAIGN
FINANCE

Ethical Considerations and the Election Law

Chapter Four

NYS Board of Elections

The New York State Board of Elections (BOE) is the agency vested with the responsibility for the administration and enforcement of all laws relating to elections in New York State.

The Board is also responsible for regulating disclosure and limitations governing campaign practices.

In addition to the regulatory and enforcement responsibilities, the Board offers assistance to local election boards and investigates complaints of possible statutory violations.

Political Contributions

The Lobbying Act does not restrict lobbyists from contributing to political candidates or political committees, nor does the Ethics Commission enforce the Election Law.

The Lobbying Act provides that political contributions are not Reportable Compensation and Expenses for lobbying and should not be reported on a Bimonthly or Client Semi-Annual Report.

However, there are ethical considerations for lobbyists in relation to the Election Law.

“True Name of the Contributor”



It's important to be aware of the “True Name of the Contributor” Law ([NYS Election Law § 14-120](#)).

Rationale

The “true name of the contributor” provision is of critical importance to determine who is contributing to candidates and political committees and the amount of such contributions.

This assists the Board of Elections and the public in determining whether applicable contribution limits have been complied with.

Provisions

If a lobbyist delivers a contribution to a political committee on behalf of a client, the check must be from the client's checking account.

The lobbyist should not write from his or her personal funds and be reimbursed at a later date, nor report such expense on a Bimonthly Report or Client Semi-Annual Report.

Know Your Contribution Limits

The Election Law places various limits on contributions.

If you are a lobbyist and have questions about making a contribution to a political candidate or political committee, please contact the New York State Board of Elections for further information.

Contact the New York State Board of Elections at:

(518) 474-6220

www.elections.ny.gov

Additional Resources

Visit the Ethics Commission's website for the most up-to-date information on lobbying and ethics in New York State:

Lobbying Laws and Regulations:

<https://ethics.ny.gov/lobbying-laws-and-regulations>

Lobbying Info Center:

<https://ethics.ny.gov/lobbying-info-center>

Filing Information and Forms:

<https://ethics.ny.gov/fds-filing-information-and-forms>

Thank You.

This concludes Ethics for Lobbyists.

Please send the “Affirmation of Completion” form to
education@ethics.ny.gov
to receive credit for completing this course.

For questions regarding any of the information in this course, please contact
the Ethics Commission “Attorney of the Day” at:

518-408-3976

legal@ethics.ny.gov